

**TAB 16**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 33  
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

JULY 1, 2021

1 Virginia.

2 Then, what we've provided for the Court as a benchmark  
3 for comparison purposes, a county average, a state average,  
4 and a national average so that you can look at a particular  
5 month and see that 40,000 dosage units of oxycodone were  
6 sold in say December of 2009 and compare it to the average  
7 pharmacies around the country, in the State of West  
8 Virginia, and within Cabell County.

9 We also went to great lengths to establish through the  
10 defendants' witnesses that their monitoring program was  
11 nationwide and systemic. And what we mean by that is that  
12 its successes are nationwide successes. Systemic successes.  
13 But its failures are systemic failures.

14 And, as evidence of that, we've given examples in the  
15 far right-hand column of other pharmacies around the state  
16 that makes the argument that their systems were functioning  
17 impossible.

18 We did so with reference to just oxycodone. We did so  
19 with reference to hydrocodone. And we did it for each of  
20 the three defendants. We went into painstaking detail to  
21 show the actual transactions to actual pharmacies to  
22 demonstrate that this conduct applies to Huntington-Cabell  
23 County, West Virginia.

24 So, closing argument, we may spend a lot of time going  
25 and comparing and giving you specific examples, but to argue

1 that we failed to identify the specific conduct to specific  
2 pharmacies is not consistent with the record. What we would  
3 say is the measurement of whether or not their conduct was  
4 reasonable can be determined by looking at the volume of  
5 pills they sold either on a local level, regional level,  
6 state level, or national level.

7 Now, with regard to your comment about negligence or  
8 your comment about the -- which standard we apply,  
9 regardless of whatever the standard is, whether it's  
10 negligence or unreasonable interference, if you're looking  
11 for some baseline of what is normal, we've given it to you.  
12 And to be able to look at what is abnormal, I submit, is  
13 facially evident in the records that we've produced to you.

14 And, if you don't have any other questions, I'll turn  
15 the floor back over to Mr. Majestro.

16 THE COURT: All right. Thank you.

17 MR. MAJESTRO: And I -- I apologize for Mr.  
18 Rafalski. I get the two "R" DEA witnesses mixed up.

19 So, let's -- and let's talk a little bit about Mr.  
20 Rafalski's testimony. You know, we heard a lot about --  
21 from the defendants about what he didn't testify to, but  
22 they didn't tell you a lot about what he did testify to, and  
23 he testified that once a suspicious order is flagged it is  
24 the -- it's the duty of the defendants to stop the drugs and  
25 to stop the shipment of the drugs.

1           He testified about the thousands of transactions under  
2           a number of different suspicious order monitoring tests that  
3           one could reasonably apply that would have been flagged and  
4           shipment stopped had the defendants had a -- had systems in  
5           place that would do that.

6           Now, the important thing about Mr. Rafalski's testimony  
7           is he went through the defendants' records and there isn't  
8           evidence that -- other than this anecdotal, yeah, we were  
9           doing -- we were -- we were doing due diligence, but they  
10          didn't produce any evidence of that due diligence through  
11          Mr. Rafalski or to anyone else.

12          And they say, well, we weren't required to keep the  
13          records. But, certainly, as something as important as that,  
14          if it was done, they could give us some specific examples of  
15          places where due diligence was conducted and the orders were  
16          stopped on a level.

17          But what we do know is that they -- for a long period  
18          of time they had policies in place where they didn't stop  
19          the shipments. And what we do know is, as Mr. Farrell has  
20          shown you, two of these specific pharmacies, the volume that  
21          went into those -- went into those pharmacies.

22          So, the combination of that evidence, we believe, is  
23          sufficient for you to conclude that they were not doing  
24          their job under the CSA and, as he testified, as Mr.  
25          Rannazzisi testified, as a number of the defendants'